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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ANNA A. DAVIS, et al.,

9 Plaintiffs,

10 v.

11 SEVA BEAUTY, LLC, et al.,

12 Defendants.

C17-547 TSZ

ORDER

13 THIS MATTER comes before the Court on defendants' motion to stay this action
14 pending arbitration, docket no. 17. By Minute Order entered July 13, 2017, docket
15 no. 38, the Court granted defendants' motion in part and deferred it in part. This Order
16 explains the Court's reasons for granting the motion to stay with respect to plaintiffs'
17 claims against defendant SEVA Beauty, LLC ("SEVA") and addresses the deferred
18 portion of the motion.¹

19 **Background**

20 ¹ In its prior Minute Order, the Court directed the parties to file supplemental briefs addressing whether
21 plaintiffs' claims against the individual defendants are subject to arbitration pursuant to contracts to which
22 they are not parties and, if not, whether such claims should nevertheless be stayed pending the outcome of
23 arbitration proceedings involving SEVA. Minute Order at ¶ 1(b) (docket no. 38). The parties filed a joint
24 response indicating their agreement that, if plaintiffs' claims against SEVA must be arbitrated, then their
25 claims against the individual defendants should also be arbitrated, and this case should be stayed. Joint
26 Response (docket no. 39).

1 Plaintiffs are disgruntled franchisees who, between 2013 and 2016, entered into
2 contracts with SEVA, a franchisor of salons housed in Walmart stores across the country.
3 Plaintiffs allege various violations of certain state laws governing franchises and seek
4 rescission of their agreements. See Am. Compl. at §§ III & VI (docket no. 2) (citing the
5 Washington Franchise Investment Protection Act, the Michigan Franchise Investment
6 Law, the Minnesota Franchise Act, and the Illinois Franchise Disclosure Act of 1987).
7 They also seek actual and treble or punitive damages, as well as costs and attorney’s fees.
8 See id. at § VI. Plaintiffs assert their claims against SEVA, as well as its sole members
9 Vasilios Maniatis and Sonal Maniatis, its Chief of Staff Kari Comrov, its Senior Director
10 of Operations or Director of Spa Operations Bree Viscia, and its former Director of
11 Operations Jonathan Kittner. See id. at ¶¶ 16-19, 53, 62, 71, & 80. Defendants contend
12 that all of plaintiffs’ claims must be arbitrated pursuant to the terms of the respective
13 agreements with SEVA.

14 **Discussion**

15 In enacting the Federal Arbitration Act (“FAA”), Congress endorsed a federal
16 policy favoring arbitration agreements. See Moses H. Cone Mem’l Hosp. v. Mercury
17 Constr. Corp., 460 U.S. 1, 24 (1983). Section 2 of the FAA treats an arbitration
18 provision in a written contract as “valid, irrevocable, and enforceable, save upon such
19 grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. As
20 with any other contract, the parties’ intentions control, but those intentions are liberally
21 construed in favor of arbitration. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth,
22 Inc., 473 U.S. 614, 626 (1985). Any doubts regarding arbitrability, whether stemming
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1 from interpretation of the contract language or the assertion of waiver, delay, or similar
2 defense, are resolved in favor of arbitration. *Id.* (quoting *Moses H. Cone*, 460 U.S. at 24-
3 25). In resisting defendants’ motion to stay this action pending arbitration, plaintiffs
4 contend that the Court, not the arbitrator, must determine the arbitrability of plaintiffs’
5 claims, and that plaintiffs’ prayer for rescission as a remedy for violation of certain state
6 franchise laws constitutes an equitable claim falling outside the scope of the arbitration
7 provisions at issue.

8 Whether the parties agreed to arbitrate arbitrability is a question for the Court
9 unless the parties “clearly and unmistakably” provided otherwise. *AT&T Techns., Inc. v.*
10 *Commc ’ns Workers of Am.*, 475 U.S. 643, 649 (1986); *Brennan v. Opus Bank*, 796 F.3d
11 1125, 1130 (9th Cir. 2015). Incorporation of the American Arbitration Association
12 (“AAA”) rules can constitute “clear and unmistakable” evidence that the parties agreed to
13 arbitrate arbitrability. *Brennan*, 796 F.3d at 1130. Express contractual language or “a
14 course of conduct demonstrating assent” is also “clear and unmistakable” evidence of an
15 agreement to arbitrate arbitrability. *Mohamed v. Uber Techns., Inc.*, 848 F.3d 1201, 1208
16 (9th Cir. 2016) (quoting *Momot v. Mastro*, 652 F.3d 982, 988 (9th Cir. 2011)). In
17 *Mohamed*, the Ninth Circuit held that, with one exception,² the question of arbitrability
18 had been delegated by the parties to the arbitrator. 848 F.3d at 1206, 1209. The parties’
19 agreement required arbitration of all disputes that “otherwise would be resolved in a court
20

21 ² One of the two agreements at issue contained a clause that required “a court of competent jurisdiction”
22 to decide whether waivers of the right to bring class, collective, and private attorney general actions were
23 “invalid, unenforceable, unconscionable, void, or voidable.” 848 F.3d at 1208.

1 of law,” including those “arising out of or relating to interpretation or application of” the
2 arbitration provision. *Id.* at 1208-09.

3 Each plaintiff in this action entered into one of three forms of franchise agreement
4 with SEVA. Plaintiffs Punardeep Sandhu and Amarjeet Randhawa, who are the only
5 members of plaintiff PR Spas & Salons, LLC (“PR Spas”), signed a contract (Form 1)
6 containing a provision that reads in relevant part:

7 Except as qualified below, any dispute between you and us . . . arising
8 under, out of, in connection with or in relation to this Agreement . . . must
9 be submitted to binding arbitration under the authority of the Federal
10 Arbitration Act and must be determined by arbitration administered by the
American Arbitration Association pursuant to its then-current commercial
arbitration rules and procedures. . . . Any issue as to whether a matter is
subject to arbitration will be determined by the arbitrator. . . .

11 Defs.’ Ex. A (docket no. 17-1 at 3-4).

12 Plaintiffs (i) Anna A. Davis and Christiana Grace, LLC, (ii) Jason and Karen
13 Bleick and Beauty in Spokane, LLC, (iii) Gregory and Robin Kelly and Avatar2026
14 Holdings, Inc., (iv) Thomas Cuthbert, Laura Charboneau, and Midwest Beauty, Inc., and
15 (v) Mivas, LLC (owned by Travis Hawkes and Michael D. Payne) are subject to an
16 arbitration clause (Form 2) that provides as follows:

17 Except as qualified below and in Section 10.03, any dispute between you
18 and us . . . arising under, out of, in connection with or in relation to (a) this
19 Agreement, . . . [or] (e) the scope or validity of the arbitration obligation
under this Section 10.02,³ shall be submitted to binding arbitration under
the authority of the Federal Arbitration Act and must be determined by
arbitration administered by the American Arbitration Association pursuant

21 ³ Plaintiffs contend that Form 2 limits the delegation of arbitrability to the scope and validity of § 10.02,
22 and that the applicability of § 10.03, which sets forth certain exceptions to arbitration, remains an issue
for the Court. Plaintiffs’ argument ignores § 10.02’s separate statement entrusting to the arbitrator “[a]ny
issue as to whether a matter is subject to arbitration.”

1 to its then-current commercial arbitration rules and procedures. . . . Any
2 issue as to whether a matter is subject to arbitration will be determined by
3 the arbitrator. . . .

4 Defs.' Exs. B(1)-B(5) (docket nos. 17-2 – 17-6, each at 7).

5 Plaintiffs Ryan Landon Hollis, who has purchased three SEVA franchises, and
6 On Call Enterprises, Inc., in which Michael and Susan Call are the sole shareholders,
7 each executed a franchise agreement (Form 3) that specifies the following dispute
8 resolution mechanism:

9 Any dispute between you and us . . . arising under, out of, in connection
10 with or in relation to (a) this Agreement, . . . [or] (e) the scope or validity of
11 the arbitration obligation under this Section 10 shall be submitted to
12 binding arbitration under the authority of the Federal Arbitration Act and
13 must be determined by arbitration administered by the American
14 Arbitration Association pursuant to its then-current commercial arbitration
15 rules and procedures. . . . [T]he arbitrator shall decide all factual,
16 procedural, or legal questions relating in any way to the dispute between
17 the parties, including, without limitation, questions relating to whether
18 Section 10 is applicable and enforceable as against the parties; the subject
19 matter, timeliness, and scope of the dispute; any available remedies; and the
20 existence of unconscionability and/or fraud in the inducement.

21 Defs.' Exs. D(1)-D(2) (docket nos. 17-11 & 17-12, each at 7-8).

22 By reference to the AAA rules⁴ and by explicit, clear, and unmistakable language,
23 Forms 1, 2, and 3 delegate the question of arbitrability to the arbitrator. The Court must

24 ⁴ Plaintiffs rely on *Meadows v. Dickey's Barbecue Restaurants Inc.*, 144 F. Supp. 3d 1069 (N.D. Cal.
25 2015), for the proposition that incorporation of the AAA rules does not rise to the level of “clear and
26 unmistakable” evidence of delegation when the parties are not equally sophisticated. *Meadows*, however,
27 is distinguishable. Unlike in this matter, in *Meadows*, the arbitration agreement did not expressly
28 authorize the arbitrator to decide whether claims were subject to arbitration, and the district court declined
29 to consider a reference to the AAA rules, standing alone, as sufficient evidence of an agreement to
30 delegate arbitrability to the arbitrator. *See id.* at 1077-79. Moreover, in *Meadows*, the record reflected
31 that the parties resisting arbitration had no prior experience running a business or owning a franchise and
32 no legal training or experience dealing with complicated contracts, *see id.* at 1079, whereas in this case,
33 only two of the fourteen individuals who executed agreements with SEVA have indicated that they were
34 not represented by counsel and were inexperienced in commercial matters, Hollis Decl. at ¶¶ 10-11

1 enforce this provision of the parties' arbitration agreement absent an applicable defense,
2 for example, fraud, duress, or unconscionability, none of which plaintiffs have asserted.
3 See Mohamed, 848 F.3d at 1209.

4 Even if, however, the question of arbitrability was appropriately before the Court,
5 the Court would stay this matter pending arbitration. Plaintiffs contend that, because they
6 seek rescission as a remedy, their various statutory claims fall within an exception to the
7 arbitration provisions of Forms 1 and 2. The exceptions set forth in Forms 1 and 2 are
8 nearly identical, indicating that the parties agree the following claims will not be subject
9 to arbitration:

10 any action for declaratory or equitable relief, including, without limitation,
11 seeking preliminary or permanent injunctive relief, specific performance,
12 [or] other relief in the nature of equity to enjoin any harm or threat of harm
13 to such party's tangible or intangible property, brought at any time,
14 including, without limitation, prior to or during the pendency of any
15 arbitration proceedings initiated hereunder.

16 Defs.' Exs. A (docket no. 17-1 at 4) & B(1)-B(5) (docket nos. 17-2 – 17-6, each at 8).
17 Form 3 contains no similar language. See Defs. Exs. D(1)-D(2) (docket nos. 17-11 &
18 17-12).

19 Plaintiffs' theory was previously rejected in Remy Amerique, Inc. v. Touzet
20 Distrib., S.A.R.L., 816 F. Supp. 213 (S.D.N.Y. 1993). As explained in Remy, the effect of
21 the exception is "to make injunctive relief in judicial courts of proper jurisdiction
22 available to the parties in aid of arbitration, rather than . . . transforming arbitrable claims
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(docket no. 24); Call Decl. at ¶¶ 10-11, 13 (docket no. 26). The record simply does not support a
conclusion that the franchise agreement signatories (other than Hollis and Call) lacked the sophistication
necessary to treat incorporation of the AAA rules as evidence of an agreement to arbitrate arbitrability.

1 into nonarbitrable ones depending on the form of relief prayed for.” Id. at 218 (emphasis
2 added). Thus, a party may seek a preliminary injunction pending resolution of the merits
3 by arbitration, or a permanent injunction or declaratory relief after prevailing in
4 arbitration. Id. A party may not, however, circumvent the arbitration clause by simply
5 seeking equitable remedies for claims that are squarely within the scope of matters to be
6 arbitrated. This interpretation brings the arbitration provision and the exception at issue
7 into harmony with each other and the federal policy favoring arbitration. See id.; see also
8 Allison v. Medicab Int’l, Inc., 92 Wn.2d 199, 204, 597 P.2d 380 (1979) (holding that,
9 pursuant to the Supremacy Clause of the United States Constitution, “the federal
10 arbitration act requires enforcement of the arbitration clause in the franchise agreement
11 despite the judicial remedies afforded by the Franchise Investment Protection Act”).

12 The cases on which plaintiffs rely are distinguishable. In Proulx v. Brookdale
13 Living Cmtys. Inc., 88 F. Supp. 3d 27 (D.R.I. 2015), the plaintiff was required to arbitrate
14 his claims for legal remedies, but was authorized to return to the district court, after the
15 arbitration concluded, to make a motion, if appropriate, for equitable relief. In New
16 Orleans Gas & Elec. Lights, Inc. v. Me’lange Joli, Inc., 2011 WL 2680578 (M.D. La.
17 July 8, 2011), the claims that were deemed non-arbitrable were to protect intellectual
18 property rights, not to rescind the agreement between the parties. In Detroit Med. Ctr. v.
19 Provider Healthnet Servs., Inc., 269 F. Supp. 2d 487 (D. Del. 2003), the arbitration
20 provision at issue was substantially different, excluding from arbitration “any equitable
21 suit, action, or other proceeding . . . arising out of, in connection with or in any way
22 relating to” the transaction. Id. at 490, 494. As observed in Remy, plaintiffs’ inability to
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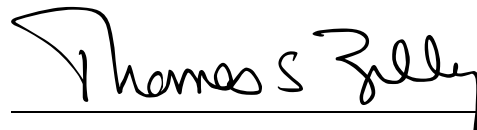
1 cite any relevant supporting authority “is not surprising” because their interpretation of
2 the provisions at issue would have “a distinctly negative impact upon the arbitrability of
3 disputes, in contravention of federal public policy.” *See* 816 F. Supp. at 218.

4 **Conclusion**

5 For the foregoing reasons, the Court previously GRANTED in part defendants’
6 motion to stay this action pending arbitration, docket no. 17, and now GRANTS the
7 deferred portion of such motion. This case is STAYED pending further order of the
8 Court. The parties are DIRECTED to file a Joint Status Report within fourteen (14) days
9 after the conclusion of arbitration proceedings or by July 31, 2018, whichever occurs
10 earlier. The Clerk is DIRECTED to send a copy of this Order to all counsel of record and
11 to remove this matter from the active docket.

12 IT IS SO ORDERED.

13 Dated this 13th day of September, 2017.

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16 Thomas S. Zilly
17 United States District Judge
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